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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,385	03/22/2007	Heike Hilgers	327_109	9019
20874	7590	08/20/2008	EXAMINER	
MARJAMA MULDOON BLASIAK & SULLIVAN LLP			SHABMAN, MARK A	
250 SOUTH CLINTON STREET				
SUITE 300			ART UNIT	PAPER NUMBER
SYRACUSE, NY 13202			2856	
			MAIL DATE	DELIVERY MODE
			08/20/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/575,385	HILGERS, HEIKE
	<b>Examiner</b>	<b>Art Unit</b>
	MARK SHABMAN	2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 10 April 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 5-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 5-8 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 10 April 2006 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 4/10/2006.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_ .
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 5-8** are rejected under 35 U.S.C. 103(a) as being unpatentable over the applicant admitted prior art in view of Danielson US Patent 5,049,168 (hereinafter referred to as Danielson).

Regarding **claim 5**, the applicant's own disclosure of a typical test leak unit on page 1 of the specification describes the construction and method of use for such a unit wherein a membrane is disposed within a chamber and an oxygen-free hydrogen/nitrogen mixture is introduced as a test gas. The purpose of using nitrogen along with hydrogen is due to the potential explosiveness of hydrogen as was well known in the art. As the permeation constant of the membrane determines how much of a gas passes through said membrane, it would have been obvious to one of ordinary skill in the art at the time of invention to use a gas with a similar permeation constant as hydrogen in the test gas mixture, so that the leak rate could be determined without having to sample pure hydrogen which can be dangerous as previously noted. One of ordinary skill in the art at the time of invention would have likely chosen a gas such as helium for such a task as it is the closest gas in molecular size to hydrogen and would simulate the permeability of hydrogen well. Further, Danielson describes a helium leak

detection method and in the background of the invention discusses the benefits of using helium for leak detection, teaching that due to its small molecular size even the tiniest holes or leaks can be detected. Additionally, by comparing the permeation coefficients of Hydrogen and Helium to various membrane materials as listed in the provided table taken from *Polymer Handbook* by Yasuda and Stannet, it can be seen that the choice of Helium would fall within the range of 50% to 200% of the permeation coefficient of Hydrogen as is claimed.

Regarding **claim 6**, as described above, the added gas is helium as claimed.

Regarding **claim 7**, the background of the invention describes the gas used in the leak test unit as oxygen-free. Substituting helium for the nitrogen component would not change this.

Regarding **claim 8**, the background of the invention describes the hydrogen content as being normally 5% of the test gas which would be equivalent to the "lower than 10%" as claimed.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK SHABMAN whose telephone number is (571)270-3263. The examiner can normally be reached on M-F 7:30am - 5:00pm, EST (Alternating Fridays Off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. S./  
Examiner, Art Unit 2856  
/Hezron Williams/  
Supervisory Patent Examiner, Art Unit 2856